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*in opinion*

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CONCORD, N.H.

James J. Barry, Commissioner  
N. H. Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Re: Definition of Dependent and Defective Children

Dear Sir:

You have inquired as to the definition of dependent and defective children as the terms are used in R.L., c. 126, s. 6, paragraphs II and III. The section sets forth in detail the duties of the Department of Public Welfare. Paragraph II concerns child welfare service which is defined as including protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent. Paragraph III provides that the Department shall have general supervision of all neglected, dependent, delinquent or defective children. Chapter 126 nowhere defines the terms as used in paragraphs II and III and it is therefore necessary to turn elsewhere for a definition.

Chapter 132 provides the definition for neglected and delinquent children and in the same manner it is necessary to look to chapter 127 for a definition of a dependent child. This chapter, entitled "Support of Dependent Children," does not contain a definite, explicit definition of the term. However, when speaking of the duties of the Commission it refers in section 4 to "all such orphan minors." The preceding section makes reference to the duty of towns, cities or counties to support minors at some orphan asylum or home, or with some private family of good repute. The chapter does not refer to parents or their duties except in section 12 in relation to children not claimed after birth. In view of this, it is my opinion that dependent children are those orphan minors who are being supported, or in the need of support, at the expense of a town, city or county. This definition is restrictive, but I do not believe impractical. If the child is not an orphan yet in need of proper care and support, it would fall within the definition of a neglected child.

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With respect to defining the term defective, no help is obtained from other provisions of the welfare laws. The term is used in paragraph III, section 6 of chapter 126, in the same phrase with neglected and delinquent. It would, therefore, seem that the Legislature intended that defective children be of the same category as the other types therein enumerated. It is my opinion that the term defective, as used in chapter 126, is intended to mean those children who because of their defect are likely to become neglected or delinquent. To me this implies, in general, the child who is mentally defective. No doubt the physically handicapped child may in many instances be subject to the same peril. However, the provisions relative to the duties of the Department do not indicate that it was intended that it provide a medical or rehabilitation program for the physically defective child. Without clearer legislative definition it is my opinion that the term defective must be construed to mean the mentally defective child in need of education, training and support prior to its lawful commitment to a proper institution.

This opinion should not be construed to prohibit assistance to a physically defective child who may fall within another class entitled to your assistance.

Very truly yours,

Richard C. Duncan  
Assistant Attorney General

RCD/aml